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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,195	09/24/2003	Priti Srivastava	EACH2.P005	2658

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EXAMINER	
DOAN, ROBYN KIEU	

ART UNIT	PAPER NUMBER
3732	

MAIL DATE	DELIVERY MODE
08/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/669,195	SRIVASTAVA, PRITI	
	Examiner	Art Unit	
	Robyn Doan	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 May 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *6-11 and 13-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6-11, 13-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicant's Amendment filed 5/21/2007 has been entered and carefully considered. Claims 6 and 10 have been amended. Limitations of amended claims have not been found to be patentable over prior art of record, therefore, claims 6-11, 13-16 are rejected under the same ground rejections as set forth in the office action mailed 1/22/2007.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 6-11 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (US 4,547,903) in view of Milani (US 5,875,488).

In regard to claims 6-8, 11 and 13-14, Brown et al. discloses a visor sweatband attached to a visor that can be used as a multi-use hair accessory. The sweatband comprises a substantially one piece compact cylindrical band (sweat band 11) formed of soft (terrycloth, col. 2, line 24) elastomeric material, as discussed in column 2, lines 22-27. The band (11) has a continuous and unbroken circumference and a substantially continuous height, as shown in Figures 1 and 2. The band (11) is continuously stretchable in at least the circumferential direction along the entire circumference

thereof. The sweatband is capable of being worn as an ear warmer, scarf or muffler. The elastomeric material is a material capable of providing warmth. At least a portion of the band is reinforced by a plastic portion (visor portion 16), which is rigid, plastic and a decorative accent, as discussed in column 2, lines 35-48 and column 2, line 67 to column 3, line 2.

Brown et al. does not disclose a relatively long and narrow opening formed in the cylindrical band. Milani discloses a cylindrical band (fabric band and ponytail pull-through means 30) attached to a visor that includes a substantially elongated opening of a dimension allowing the wearer's ponytail to be pulled through the opening, as discussed in column 2, lines 47-56. The elongated opening is an elongate slit (fabric band and ponytail pull-through means 30) disposed along at least a portion of the circumference of the band and sized to enable a wearer's ponytail to be pulled through and held securely, as shown in Figure 3. The length of the slit (fabric band and ponytail pull-through means 30) is not greater than a distance between the ears of a wearer, as measured across the back of the wearer's head. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the sweatband of Brown et al. with a slit, as taught by Milani, in order for the wearer to be able to put her ponytail through the sweatband. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the opening being relatively long and narrow, since such a modification would have involved a mere change in the shape of the known component. A change in shape is generally

recognized as being within the level or ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

In regard to claims 15-16, in ordinary use, the sweatband of Brown et al., as modified by Milani, would be worn in the same way that the visor of Milani is worn. When putting the band of Milani on during ordinary use, the user's ponytail is pulled through the slit and the visor is pushed over the user's head and then pulled back up to the position shown in Figure 2. Pushing the band over the user's head and around the neck is necessary to make sure that the user's hair is not in his/her face. If the user's hair is long, it may be necessary to push the sweatband over the user's face, around the user's neck, in order to ensure that the user's hair will be held back by the band when it is placed in the position shown in Figure 2. The steps of pushing the band over the user's head and pulling the band back up to the position shown in Figure 2 are well known. These steps are the steps most people perform when putting on a visor or headband or sweatband.

In regard to claims 9-10, Brown et al in view of Milani fail to show the shape of the opening being round or square, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the opening being round or square, since such a modification would have involved a mere change in the shape of the known component. A change in shape is generally recognized as being within the level or ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Response to Arguments

Applicant has argued that the band shown by Brown et al has nothing to do with hair managing, however, the band shown by Brown et al is capable to manage hair. Applicant has also argued that using the opening as taught by Milanie into the band of Brown et al would destroy the principal of each of the references, however, Applicant is noted that Brown et al does not teach that employing an opening in the band would destroy the reference and since Milanie shows the teaching of the opening for holding a ponytail, therefore, it is proper to combine the references.

Applicant further argued that the band shown by Brown et al and Milanie cannot be pulled over the user's head and around the neck since the sun visor structure would interfere. As discussed above, it is obvious to one having an ordinary skill in the art to push the sweatband over the user's face, around the user's neck, in order to ensure that the user's hair will be held back by the band.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner
Art Unit 3732

rkd
July 28, 2007